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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

KENNETH SCOTT et al., Plaintiffs and Appellants, v. JPMORGAN CHASE BANK, N.A., et al., Defendants and Respondents.	E062911 (Super.Ct.No. RIC1217244) OPINION

APPEAL from the Superior Court of Riverside County. Daniel A. Ottolia, Judge. Affirmed.

Kenneth Scott and Stephanie Scott, in pro. per., for Plaintiffs and Appellants.

Lynde Selden II for Defendant and Respondent Plaza Home Mortgage, Inc.

Bryan Cave, Glenn J. Plattner and Richard P. Steelman, Jr., for Defendants and Respondents JPMorgan Chase Bank, N.A., California Reconveyance Company, and Bank of America, National Association as successor by merger to LaSalle Bank National Association as Trustee for WMALT 2006-AR6.

Plaintiffs and appellants Kenneth Scott and Stephanie Scott, representing themselves in propria persona, brought suit to challenge foreclosure proceedings instituted against their property in Moreno Valley. They contend, among other things, that the lender never funded the loan secured by the property, and that signatures on various documents related to the foreclosure are forged.

The trial court sustained without leave to amend the demurrer to plaintiffs' second amended complaint (SAC) of defendant and respondent Plaza Home Mortgage, Inc. (Plaza). After plaintiffs presented their case-in-chief during a bench trial, the trial court granted judgment in favor of the remaining defendants and respondents—JPMorgan Chase Bank, N.A. (Chase), California Reconveyance Company (CRC), and Bank of America, National Association as successor by merger to LaSalle Bank National Association as Trustee for WMALT 2006-AR6 (BANA)—pursuant to Code of Civil Procedure[1] section 631.8.

On appeal, plaintiffs contend that their claims against Plaza were adequately pleaded, and that the remaining defendants' motion for judgment should have been denied. We affirm.

[1] Further undesignated statutory references are to the Code of Civil Procedure.

I. FACTUAL AND PROCEDURAL BACKGROUND

The gravamen of the SAC is that plaintiffs own a property in Moreno Valley, and that defendants are improperly seeking to foreclose on it.[2] Plaintiffs allege that they purchased the property in 2002. In 2006, they "sought a loan through [Plaza], but [Plaza] never funded the loan." Plaintiffs further allege that various documents associated with the "purported loan," as well as later nonjudicial foreclosure proceedings, are void and/or fraudulent.

Plaza is identified as the lender in the deed of trust attached to the SAC. The SAC asserts, however, and Plaza contends, that it has not had an interest in the loan since 2006, having sold it within weeks after the date of the deed of trust. The SAC describes Chase as "a debt collector/servicer to the Lender on the Deed of Trust." BANA is described as a party that "claims to be the successor beneficiary under the deed of trust," and CRC is a party that "claims to be the successor trustee under the Deed of Trust."

Plaintiffs filed suit against Chase, CRC, and BANA on November 26, 2012. Plaza was added as a defendant in the SAC, filed June 6, 2013. The SAC asserts four causes of action against all defendants: (1) cancellation of instruments; (2) declaratory relief; (3) quiet title; and (4) injunctive relief.

Plaza's demurrer to the SAC was sustained without leave to amend on October 8, 2013. A bench trial with respect to plaintiffs' claims against the remaining defendants was held on December 23, 2014. Only Kenneth Scott testified on plaintiffs' behalf; two

[2] Although several notices of trustee's sale appear in our record, there is no indication that the property was ever sold.

expert witnesses that had previously been designated by plaintiffs did not appear. At the close of plaintiffs' presentation of their case in chief, counsel for Chase, CRC, and BANA made an oral motion for judgment pursuant to section 631.8, which the trial court granted.

II. DISCUSSION

A. Standards of Review.

1. Demurrer.

On an appeal from a judgment of dismissal on a demurrer, we treat the plaintiff's properly pleaded factual allegations as true. (*Aubry v. Tri–City Hospital Dist.* (1992) 2 Cal.4th 962, 966–967.) We accept as true facts appearing in exhibits attached to the complaint, and, to the extent they conflict with the allegations in the pleading, we give them preference. (*Brakke v. Economic Concepts, Inc.* (2013) 213 Cal.App.4th 761, 767-768.) We do not accept as true contentions, deductions, or conclusions of fact or law. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) "[O]ur standard of review is de novo, 'i.e., we exercise our independent judgment about whether the complaint states a cause of action as a matter of law.'" (*Santa Teresa Citizen Action Group v. State Energy Resources Conservation & Development Com.* (2003) 105 Cal.App.4th 1441, 1445.) "We are not bound by the trial court's stated reasons, if any, supporting its ruling; we review the ruling, not its rationale." (*Mendoza v. Town of Ross* (2005) 128 Cal.App.4th 625, 631.)

2. Motion for Judgment Pursuant to Section 631.8.

A party may move for judgment in its favor under section 631.8 after the opposing party has completed the presentation of its evidence. (§ 631.8, subd. (a).) The trial court, sitting as trier of fact, may weigh the evidence and order judgment in favor of the moving party. (*Ibid.*) The purpose of the statute is to dispense with the need for the defendant to produce evidence where the court is persuaded that the plaintiff has not sustained its burden of proof. (*Combs v. Skyriver Communications, Inc.* (2008) 159 Cal.App.4th 1242, 1262 (*Combs*).) The trial court weighs credibility of witnesses and evidence; the court may choose to believe some witnesses and not others.[3] (*Ibid.*)

We generally review a court's factual findings in an order on a motion for judgment under section 631.8 for substantial evidence. (*Fink v. Shemtov* (2012) 210 Cal.App.4th 599, 608.) However, when a party challenges on appeal a ruling that it failed to carry a burden of proof, the substantial evidence standard is inappropriate, and "'the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law.'" (*Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 465-466 (*Sonic*).) "'We review legal issues . . . under a de novo or independent standard.'" (*Fink, supra*, at p. 608.)

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[3] Plaintiffs' reliance on authority discussing the standards to be applied to a motion for nonsuit or a directed verdict in a jury trial, rather than a motion for judgment in a bench trial, is misplaced. (See *Lingenfelter v. County of Fresno* (2007) 154 Cal.App.4th 198, 204 [discussing differences between nonsuit motion and motion for judgment].) Similarly, plaintiffs' invocation of authority regarding review of statements of decision is inappropriate; no statement of decision was requested or required. (See § 632.)

B. Analysis.

1. Plaza's Demurrer Was Properly Sustained.

Plaintiffs argue on appeal that they have sufficiently stated each of their causes of action with respect to Plaza. This conclusory assertion, however, is supported by no cogent legal argument or citations to authority, and therefore properly could be treated as forfeited. (See *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 (*Benach*).) Another independently sufficient basis to deem the argument forfeited is that such argument on this topic as may be gleaned from plaintiffs' briefing is not set out under a separate heading, but rather buried in a section entitled "FACTS AND ARGUMENTS" and a subheading "**Standard of Review**". (*Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 201 (*Consolidated*) [argument not presented under a separate heading forfeited]; see also *Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639 [parties representing themselves in propria persona are held to "the same restrictive rules of procedure as an attorney"].)

Even if not forfeited, however, plaintiffs' arguments are without merit. Plaintiffs allege, in the SAC and elsewhere, not only that Plaza has no present interest in their loan, but that Plaza does not even *claim* any present interest in their loan. Plaza agrees that it sold its interest in 2006. Plaza is not among the parties participating in the foreclosure on plaintiffs' property, and plaintiffs have articulated no coherent theory as to what sort of relief they require with respect to Plaza. Plaintiffs suggest that they need to take discovery from Plaza to "produce the truth as to if [Plaza] funded the purported loan." They also cite to "the fact that [Plaza] has no interest [in the loan] and a lis pendens has

been recorded . . . ." Neither of these points demonstrates any viable cause of action with respect to Plaza. Plaza's demurrer was properly sustained without leave to amend.

2. Defendants' Motion for Judgment Was Properly Granted.

Plaintiffs' arguments with respect to the trial court's ruling on the remaining defendants' motion for judgment suffers the same failings as their arguments with respect to Plaza's demurrer; the arguments are largely unsupported by cogent legal argument or citations to authority, and are not set out under separate headings. They therefore could properly be deemed forfeited on procedural grounds. (*Consolidated, supra*, 204 Cal.App.4th at p. 201; *Benach, supra*, 149 Cal.App.4th at p. 852.)

In any case, however, the arguments also fail on the merits. Plaintiffs challenge the validity of the assignment of their deed of trust, asserting that the trial court "omitted the controverted issue as to whether there was any assignment of beneficial interest under the deed of trust to [BANA] and whether the assignment of the deed of trust was valid under California Law . . . ." It is doubtful, however, that they could have standing to raise such a challenge, given that no foreclosure on their property has yet been carried out: "California courts do not allow such preemptive suits because they 'would result in the impermissible interjection of the courts into a nonjudicial scheme enacted by the California Legislature.'" (*Saterbak v. JPMorgan Chase Bank, N.A.* (2016) 245 Cal.App.4th 808, 814.)

The California Supreme Court has recently held that a borrower may have standing to sue for wrongful foreclosure, where the borrower can show a defect in the assignment renders the assignment void, rather than voidable. (*Yvanova v. New Century*

Mortgage Corp. (2016) 62 Cal.4th 919, 942-943.) *Yvanova*'s holding, however, is expressly limited to the postforeclosure context. (*Id.* at pp. 934-935.) Moreover, even if *Yvanova*'s holding applied to plaintiffs' claims, plaintiffs have not shown any defect in the assignment that would render it void. Plaintiff argued at trial that certain signatures on documents related to the assignment were forged, but presented no evidence, other than his own testimony regarding the documents, in support of that proposition. The trial court acted appropriately in deciding how much weight to give plaintiffs' evidence when ruling on defendants' motion for judgment. (*Combs, supra,* 159 Cal.App.4th at p. 1262.) We need not opine whether the evidence could support a conclusion in plaintiffs' favor on the issue of whether a forgery occurred; it is enough to note that it does not compel a decision in their favor, and therefore we will not disturb the trial court's factual finding. (*Sonic, supra,* 196 Cal.App.4th at pp. 465-466.)

Plaintiffs also question the role of Mortgage Electronic Registration Systems, Inc. (MERS) in the assignment, pointing out that Plaza assigned its interest in the loan in 2006, and arguing that MERS's authority under the deed of trust was limited to acting as nominee for the lender. This argument fails, because it ignores that the deed of trust explicitly authorizes MERS to act as nominee for the lender *and* any "successors and assigns" of the lender.

Plaintiffs continue to question whether their loan was ever in fact funded. This argument, however, although not fleshed out in briefing on appeal, apparently rested, at least as initially pleaded, on a variant of the "'vapor money'" theory, that is, "the convoluted and nonsensical argument that a plaintiff does not owe the money advanced

by the lender on [his or her] loan because the indebtedness was not funded by the lender with actual money." (*Tonea v. Bank of Am., N.A.* (N.D. Ga. Mar. 18, 2014) 6 F.Supp.3d 1331, 1344.) No court of which we are aware has accepted this theory, and it is more often than not rejected as not only without merit, but frivolous. (*Id.* at pp. 1344-1345.) At trial, plaintiffs' argument was more straightforward, invoking the circumstance that they did not "see money transferred" during the loan process.[4] Either way, plaintiffs' unwillingness to concede that the loan was funded does not establish that plaintiffs did not receive the loan, particularly in light of the ample documentary evidence of the indebtedness in the record, which plaintiffs failed to demonstrate to be anything other than authentic.

In short, we agree with the trial court's assessment that plaintiffs "just haven't made a case." Plaintiffs have demonstrated no error by the trial court.

III. DISPOSITION

The judgment is affirmed. Defendants are awarded their costs on appeal.

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HOLLENHORST
Acting P. J.

We concur:

MILLER
J.

[4] Kenneth Scott testified: "I don't know that the loan funded. . . . You're given a ton of paper. You—you don't see any of that. You don't see money transferred. . . . You don't see any of that."

SLOUGH

J.